

some \$45,000 to the allowances denounced by them.

In relation to the Weeling routes, the minority, after showing that contractors had been paid for a second daily mail a considerable period when it was not run, make the following statement, viz:

"The original contract for carrying the mail on routes Nos. 1,201, 1,202, 1,389, 1,390, and 1,400, mentioned at the head of the preceding article, was for the annual compensation of \$7,000. A stipulation was inserted in the contract, that for \$8,950, the contractors should perform certain services, specified in the improved bid of Reeside and Stockton, if directed. The services were immediate, directed to commence with the contract, 1st January, 1832.

"One of the services thus directed was a tri-weekly mail from Baltimore to Weeling, 266 miles. The sum allowed for this tri-weekly mail is presumed to have been in proportion to the sum (\$36,400) afterwards allowed for the four additional trips, at which rate it would have been per annum \$4,800 and far exceeding a pro rata allowance on the original contract.

The whole number of miles run per week under the original contract, on all these routes, was 2,409; and the number by a daily mail from Baltimore to Weeling, was 1,862. Then, as the 2,409 miles is to the \$7,000, so is the 1,862 miles to the compensation for running a daily mail on this route, viz: \$5,410; and then, as the seven trips to the \$5,410, so is the three trips to the pro rata allowance therefor, viz:

Exceeded the pro rata per annum by 2,431

Which for four years amounts to \$9,824

Another extra allowance was made, to commence with the contract for four additional trips per week, to the tri-weekly line, and for expediting the mail from Baltimore to Weeling, so as to run through in 48 hours instead of 70 hours, thereby granting 12 hours, at the annual compensation of

Of this sum, for the four additional trips, was allowed per annum \$6,400

The pro rata allowance for the said four trips, according to the above data, would be 3,191

Exceeding the pro rata per annum by 3,309

Which for 4 years amounts to \$13,236

This sum is applicable to the expediting the mails

"Which for four years amounts to \$66,248

It appears, however, from the testimony of Mr. Weaver, that when he became acquainted with this route, 1st April, 1833, the mail was then running through at an average of fifty-six hours, and so continued to run through the summer and fall; during the next winter it averaged about seventy hours, and from May, 1834, it averaged about sixty-two hours. Assuming, then, that for the first two years they run through in fifty-six hours, gaining only four hours, the contractors would have been entitled to only one-third of this allowance during that period, and for the remainder of the time they were entitled to no part of it. They are entitled only to one-third part of \$16,562 for each of the two first years, amounting to

Excess for four years 54,807

Add excess, as above, for the tri-weekly line 9,914

Add excess, as above, for the four additional trips 13,309

Excess for four years \$78,040

These gentlemen knew nothing of the restoration of all the retrenchments on these routes, and the addition of fifty per cent to the whole pay and allowances, amounting to \$19,254 a year, and in four years to \$77,016.

So strong was the conviction of Congress, founded on the reports of their committees, that these contractors and others had been paid immense sums more than was justly due to them, that in the act "to change the organization of the Post Office Department," &c. passed July 24, 1836, provisions were made to recover the money back in the following words, viz:

"Sec. 17. And be it further enacted, That in all cases where any sum or sums of money have been paid out of the funds of the Post Office Department to any individual or individuals, under the pretence that service has been performed therefor, when in fact such service has not been performed, or by way of additional allowance for increased service actually rendered, when the additional allowance

exceeds the sum which, by the provisions of law, might rightfully have been allowed therefor; and in all other cases where the moneys of the Department have been paid over to any person in consequence of fraudulent representations, or by the mistake, collusion, or misconduct of any officer or Clerk of the Department, it shall be the duty of the Post Master General to cause suit to be brought in the name of the United States of America, to recover back the sum, or the excess as the case may be, with interest thereon."

To comprehend the full bearing of the points now in question, of these proceedings of the majorities and minorities of the committees, and of Congress itself, it must be carefully borne in mind, that the committees and Congress knew nothing whatsoever of the allowances, amounting to \$161,000 and odd dollars, sweeping back to January 1, 1832, which made up the Solicitor's award. All the services covered by these allowances, down to 1835, were fully examined by the committees, and were taken into the account when they, in the manner we have seen, declared that the contractors had already been paid beyond the value of those services to an enormous amount. The claims acted on by the Solicitor are in addition to, OVER AND ABOVE all that was known to the committees or to Congress. How much stronger must have been their condemnation, if they had found that ALL THE RETRENCHMENTS ON THESE ROUTES HAD BEEN RESTORED, AND THAT TO THE WHOLE PAY AND IMPROVED PAY HAD BEEN ADDED FIFTY PER CENT, ON THE WHEELING ROUTES, AND MORE THAN ONE HUNDRED ON THE PHILADELPHIA ROUTES!

The last report of a committee, as we have seen, was made on the 13th of February, 1835. On the 1st of May, 1835, the present Postmaster General took charge of the Post Office Department. He found the following entry on the Weeling contract, and the following credits given in the account of the contractors in this case, viz:

"March 31, 1835.—It appears there was an order drawn early in May, [June,] 1833, allowing 50 per cent; on pay from Baltimore to Weeling, on account of increase of weight of mails, impediments in National road, &c. It was held under suspense for further consideration, and in February, 1835, confirmed, by direction to financial branch to place it to credit of contractors down to the time of retrenchment—January 1, 1834. Now, order is given by the Postmaster General to continue the allowance of 50 per cent. from that date."

The amount of this allowance from the 1st of January, 1832, to the 31st of March, 1835, inclusive, was \$62,575 50

April 29, 1835.—For an additional daily line from Washington to Baltimore and Philadelphia, during winters of 1833-4 \$16 200 For do. do. during winters of 1834 and 1835 16,200 \$32,400 00

April 30.—For this sum for conveying mail to 30th Sept. 1831, one month after steamboat had commenced running, and which should have carried the mail 1,240 00

For this sum for mail guards to the above time 458 00

For running two coaches instead of one, and transporting the whole of the great mail between Baltimore, & Washington, it being too large to be carried in one coach, to 31st March, 1832, making 39 trips, at \$20 per trip 780 00

For do. do. June 30, 1832, 36 trips, at \$20 per trip 720 00

For do. do. Sept. 30, 1832, 46 trips, at \$20 per trip 920 00

For this sum for mail guards during the suspension of steamboat service 458 33

For this sum paid for mail [boat] hogs, by order of Postmaster General 170 00

For running two coaches instead of one, to transport the whole of the great mail between Baltimore & Washington, to 31st December, 1832, it being too large to be carried in one, 41 trips, at \$20 per trip 820 00

This sum paid for fire-arms, and repairing them last season 76 50

For running two coaches instead of one, and transporting the whole of the great mail between Baltimore & Washington, to 31st March, 1833, it being too heavy to be carried in one, 39 trips, at \$20 a trip. 780 00

For running through between Baltimore and Washington city and Weeling in two days, during the summer, from 1st January, 1834, to 1st April, 1735, at \$1637 50 per quarter. 8,437 50

Allowance for extra horses & postillions from Baltimore to Weeling, from 1st Jan. 1834, to 1st April, 1835, at \$2,453 per quarter 12,265 00

Whole amount of new allowances and entries 122,101 46

Started at seeing such an enormous addition recently made to allowances which Congress had just then so severely condemned, and denounced to the country, through numberless copies of the committee's report, and alarmed for the effect upon the finances of the Department, already beset with embarrassments, the undersigned, without going into their merits, directed them all to be suspended from the credit of the contractors. Afterwards, at their pressing solicitation, he examined into their merits, and came to the conclusion that the chief part of them was unauthorized by law, in which opinion he was subsequently sustained by that of the Attorney General.

At the next session of Congress, the contractors applied to be relieved from the effect of that suspension. It was not to be expected that Congress, after condemning, as we have seen, the allowances known to them through their committees, would proceed to add 50 or 100 per cent. to the same allowances, without the slightest change in the circumstances or in the service. However, without making any call on the Department for the facts in the case, they proceeded to pass, without any information as to the nature of the claims, the act of July 2, 1836, vesting the settlement of these new claims in the Solicitor of the Treasury.

Now what was the object and intention of this act? To ascertain that, we must look at the state of things on which it was based, as well as its language. Certain sums of money had been suspended from the credit of contractors, and to obtain the restoration of those credits was the only object of the contractors' solicitude, so far as known to the Department or to Congress, through their letters, memorials, and representations. It has yet to appear that any one ever believed or imagined that their object was to open a door for additional claims never yet heard of, and least of all, for services which they never rendered, nor pretended to render. Or, if such were their object, it is impossible that it could have been the purpose of Congress to sanction it. After all that had been said and published about the extra allowances made in this very case, at the moment they were providing in another law for a suit against the contractors to recover back the money, it is impossible they could have intended to vest in another executive officer an unlimited & uncontrollable discretion to make new allowances of precisely the same character, to the same men, upon the same contracts, and for the same services. To suppose the legislative body intended to confer such a power, would be to make them guilty of the absurdity of ordering men to be harassed by suits in one act to recover back illegal and unjust allowances, and at the same time in another act legalizing a greater injustice, by authorizing an indefinite extension of the same allowances. It cannot be but surprising, after what had passed, that Congress interfered at all. It can only be accounted for on the supposition that they did it under a belief that no additional allowance would be sanctioned under their act.—They had a right to suppose, and probably did suppose, that the Solicitor of the Treasury would come to the same conclusion as had their own committees, and that their act would be practically a dead letter, having answered the purpose of putting an end to these claims. But it is not credible, after their denunciation of previous allowances, and while they were employed in restricting the discretion in which the mischief had originated, that they intended to vest in another quarter, without appeal, check, or control, a power to pick up and allow old claims that had been rejected, or new ones that had never been heard of in the Post Office Department or in Congress. Such an idea would be wholly incompatible with the whole action of Congress on this subject, as well as in reference to public accounts generally.

Though worded so as to be difficult of comprehension, there is inherent evidence in the act for the relief of the contractors, that it was intended to embrace only certain known and definite claims. It authorizes the Solicitor of the Treasury "to settle and adjust the claims of William B. Stokes and Richard C. Stockton of Maryland, and Lucius W. Stockton & Daniel Moore of Pennsylvania, for extra services performed by them as contractors, for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the U. S. and for that purpose to inquire into and determine the equity of the claims of them or any of them, for on account of any contract or additional contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as upon a full examination of all the evidence may seem right, according to the principles of equity."

The definite expression, "THE claims," can have reference only to claims already known—to the claims which had been suspended in the Department—which constituted the subject of controversy—and the allowance of which was the object of the application to Congress. It was evidently those claims, and none others, which were in the contemplation of Congress, when they passed the act. It was not possible that they could mean or think of claims which had never been set up, and were wholly unknown especially as the service under the contracts in question had been completed. They

must have had reference to claims then in existence.

The Solicitor allowed "the claims" referred to in the act, and the Postmaster General has paid them. But the Solicitor went further, and allowed new claims, some of which had been rejected by the former Postmaster General, and others had never been known or heard of before the act passed, and those the Postmaster General refused to pay, as well because the Solicitor had transcended his legal authority, as because they were chiefly for services never rendered. This description embraces the whole sum of \$39,472 47, which constitutes the subject of this controversy. It was believed that Congress never expected to see \$122,000 added to allowances which they had declared to be "without reason, propriety, or justice," and that they did not intend to confer on any one the power to add to them tens and hundreds of thousands by the admission of new and unheard of claims, having no foundation but in the imaginings of delusive self-interest, or the vagaries of the wildest construction. Until the day before the first portion of the award was sent to him, the Postmaster General had never conceived that the act of Congress was susceptible of such a construction, and of most of the specific claims now withheld he never heard, until he received the announcement of their allowance!

The only hesitation of the Postmaster General was, whether he would pay any part of the award without a reference of the whole subject back to Congress, with an exposition of the facts, so repugnant to his conceptions of right and wrong were its conclusions. He did not believe that all the investigations of Congress had been a farce, and their reports and illustrations, some 40,000 copies of which had been printed and sent among the people at the public expense, a pretence and a mockery, in which all parties had combined to misrepresent and destroy the administration of the department. On the contrary, he knew, that although there was much error, there was also much truth in those reports, and he believed in the sincerity of most of those who made them. He did not doubt, that the addition of \$161,000 to the allowances which they had so strongly condemned, would fill them with surprise and amazement. Inspired with those feelings himself, that he did not refuse to credit and pay any part of the award, until Congress should have an opportunity to review the whole case, is to be ascribed solely to a doubt as to his duty to do so, and his uniform practice, in cases of doubt, upon matters of private right, to decide in favor of the citizen.—But as to the additional claims presented and allowed, he had no doubt. He had the less reluctance in taking that step, because Congress was on the spot, and could easily, by an additional act, direct the whole amount to be paid, if, in their opinion, it were required by justice or law; a result not possible in his conception.

But if it be admitted that the Solicitor had a right to consider and allow new claims which were never known to the Department or to Congress, there are other fatal objections to the legality of the allowances now in question.

The first item of those allowances is an extension of the 50 per cent. allowance entered on the 31st day of March, 1835, from the 1st of April to the 31st of December of that year, inclusive, \$14,440 50.

This allowance was not for an "extra service," or any service at all. Nothing was "performed" for it. It is not based on any "contract or additional contract" made with W. T. Barry, or any one else. It originated thus:

On the 27th of March, 1833, as we have seen, while contractors were under pay for running two daily lines of four horse post-coaches on the Cumberland road, and were running but one and about half, R. C. Stockton complained to the Department that the increase in the weight of the mails was so enormous, that it was impossible to carry them with the means provided, and offered to put on such additional stock as should be competent to the object, for an addition of 25 per cent. upon their improved pay, being \$9,627 per annum. The Department ordered him to run a second full line of four horse post-coaches, reserving the question of additional compensation. On examination, it was found that contractors were already under pay for a second full line, so that no addition could be made to their compensation on that account. On the 3d of June, 1833, they applied again to the Department for an extra allowance on the same grounds, raising their demand to 50 per cent. or \$19,254 per year. In December, 1833, this allowance was again pressed. It was not, as we have seen, until February, or the 31st day of March, 1835, that it was consummated.

Now, what feature of a "contract," or "additional contract," was there, and what performance, that could justify the allowance of this 50 per cent. sweeping back to the 1st January, 1832, and coming up to \$17,016? Did the contractors in June, 1833, or February, 1835, contract to perform certain "extra services" in the year 1832, for which they were entitled to \$19,254 for that year? The letter of March, 1833, first asking this allowance, or rather one-half of it, does not place the request on service theretofore rendered, but is altogether prospective, so far as service is concerned. It states what they will do, if the allowance be authorized.

But, unquestionably, they performed as

much service for this allowance in 1832, before it was thought of, as they did in any one of the four years through which it has been extended, and that is—none at all. They did, indeed, after the application of March, 1833, again raise their tri-weekly line into a daily; but they were already under pay for that at the rate of \$6,400 per year. It has never been shown nor pretended, that they put on any other stock, or rendered any other service, in pursuance of that application. They ran two full daily lines, and no more. For the original daily line they were paid \$4,550. For the first improvement in speed, and a tri-weekly mail, they were paid \$8,050. For the railroad service, they were paid \$2,046. For the second improvement of speed, they were paid \$6,750. For making the tri-weekly a daily line, they were paid \$6,400. For 44 extra horses and 22 postillions, employed by them upon both lines over the mountains, in consequence of the great speed and weight of the mails, they were paid \$9,812. These specific allowances covered all the service rendered by them and more. There was no additional line of stages, not a stage, nor a horse, nor a postillion, employed by them in the mail service, which was not thus specifically and amply paid for. For what "extra service," therefore, was this allowance made? None whatsoever. There was no "contract," or "additional contract"—there was no "performance." It was an addition of \$77,016 to these sums denounced by the committees of Congress as paid for services not performed, and directed by law to be recovered back by suit. But, although this claim did not arise upon any "contract," or "additional contract," nor was for any "extra services performed," yet under the liberal construction given to the act by the Postmaster General, he was not disposed to question the illegal authority of the Solicitor to allow it up to 31st March, 1835. But he did question the legal authority to the 31st December, 1835, for the reason already given, and for this further reason:

Soon after the present Postmaster General took charge of the Department, he examined into the merits of this allowance, decided that it was illegal, and announced to contractors that none of it would be paid. He will not say that he directly countermanded any service on this account, because none was being performed; but he maintains that his announcement annulled and abrogated whatever there was on which this allowance was based. If there had been a contract, it would have been an annulment of that contract; if there had been service, it would have been a countermand of that service. Whatever there was in justice, excuse, or give color to the allowance, was rescinded, and made null, as effectually as if there had been a formal order of retrenchment. Had not the present Postmaster General, as the head of the Post Office Department, an absolute and undoubted right to annul and withdraw this allowance? Was his decision less authoritative than that of his predecessor? His right to annul the allowance, and the fact that he did so in the most effectual manner, are incontestable. Whence, then, the power of the Solicitor to extend it? Did the act authorizing him to settle these accounts give him authority to overrule the decisions of the Postmaster General, in questions clearly within his legal authority, and force on the Department extra allowances for services not performed, contrary to the known policy and will of its responsible head? The Postmaster General was, in 1835, most assiduously laboring to restore the credit of the Department, and guarding on all hands against unnecessary expenditures. He would have felt much concern if he had not supposed that his decision put an end to all ground of claim on this score, or if he had imagined that this allowance was still accumulating at the rate of \$19,254 a year, notwithstanding his published decision against its legality, sustained as it was by the opinion of the Attorney General. No such conception entered into his mind, nor did he hear any such suggestion from others. The allowance was supposed to have been as effectually annulled and stopped as it possibly could be by any official act which he was capable of performing.

It is, therefore, confidently maintained, that the extension of this allowance to 31st December, 1835, was illegal, because it had been previously annulled by the Postmaster General, as well as because it was a new claim, not included in "the claims," referred to the Solicitor for adjustment.

The next item which the Postmaster General refused to pay, arose from an extension by the Solicitor of the retrenched allowances from 1st December, 1835, inclusive, amounting to \$12,421 50.—This item rests on similar grounds with the preceding. Before the commencement of their regular contract service, the contractors had agreed for a certain compensation, to run through between Baltimore and Weeling in 24 days or 60 hours. They then offered, for the additional sum of \$6,750 per year, to run through in two days, or 48 hours, during summer; and their offer was accepted. This was a "contract," or "additional contract." To enable them to comply with this "additional contract," after the weight of the mails had increased, they were allowed \$9,812 per year for extra horses and postillions. By the order of retrenchment on 19th November, 1833, this "additional contract" was rescinded. Now, when or how was it renewed? The Solicitor says in Decem-

ber, 1833, or January, 1834, and he gives his proofs. The first is a statement of the Hon. Andrew Stewart, the point of which is as follows, viz:

"That shortly after the order of the Post Office Department suspending or discontinuing the increased speed, postillions and second line, on the line from Washington and Baltimore to Weeling, I had an interview with the late Postmaster General, &c. He then said distinctly, that it should be done—that the speed, postillions, and second line on this route, with the compensation, should be continued, and that I might so inform the contractors, which I did accordingly."

The next is a statement of Thomas D. Carnell, Esq. the point of which is as follows, viz:

"I reached Washington about the 10th of January, and on the next day after my arrival made known to Major Barry the peculiar hardship and difficulties the contractors on that route had to contend with," &c. "He referred to Major Hobbie, who was called in, and to whom I was introduced by him," &c. "To aid me in this, I called on Colonel R. M. Johnson and Major Eaton. We met at the room of the Postmaster General, and the subject was taken up, fully discussed, and resulted in the restoration of the original order, making the extra requisition, with the allowances then paid by the Department for such extra service prior to the suspension order."

The next is a statement of the Rev. O. B. Brown, the point of which is as follows, viz:

"I do not recollect the time, but I believe it was in the beginning of January, 1834, he (Major Barry) told me that he had determined to restore the whole of what had been retrenched on this route."

These statements all expressly refer to what was said and done in the months of December, 1833, and January, 1834.—To them the Solicitor adds a private letter from the late Postmaster General to R. C. Stockton, dated February 2d, 1834, which proves the reverse of that which is deduced from it. Major Barry says:

"I have received yours of the 31st. It was intended to direct you to continue improvements already on the road to Weeling, as indispensable. The form of the order does not, perhaps, meet the case, and it will be important for you to be present when it is done; but this need not hasten your visit to Washington, to the neglect of other important engagements, and can be finally adjusted hereafter. I would say more, but the subject is a delicate one, that can better be managed by personal converse. Be assured of my disposition to do what is just and liberal."

This letter, instead of proving that the retrenchments had already been restored, in fact, the most conclusive proof of the contrary. All the conversation of Messrs. Stewart, Carnell, Brown, and others, had palpably led only to an order recorded in the books of the Department, dated the 28th of January, 1834, written by Major Hobbie, not directing the restoration of the allowances, but stating that if the contractors continued to employ the extra horses and postillions, the Department would pay for them at some future time, when it should be able. These, it had been represented, were "already on the road," and "indispensable." No sooner does Mr. Stockton receive this order, which restored none of the allowances absolutely, and only one of them conditionally, than he writes to Major Barry his letter of the 31st of January, which elicits this reply of the 2d February. The matter was then placed in statu quo. The Postmaster General had every disposition to do what is just and liberal; but the matter was to be "finally adjusted hereafter." The contractor was told "it will be important for you to be present when it is done;" it can "better be arranged by personal converse." The "contract" or "additional contract" was yet to be made; the details were to be "adjusted" by personal converse; "hereafter." What clearer proof could there be, that it had not then been done?

Now, when did this adjustment take place? Never. There is not a particle of evidence that any thing more was ever said or done on the subject. The committees of Congress, which made their investigations after the alleged restoration, and reported in January and February, 1835, never discovered or heard of it.—The only part of the proceedings of the Department upon the contracts, and allowances on these routes, which they appeared to approve, was these retrenchments, which, as now said, were restored a year before! And it has been proved by the evidence of Major Hobbie, and the principal pay clerk, that when Major Barry understood that his allowance of the 50 per cent was construed to carry with it a restoration of the retrenched allowances, he expressly disavowed such intention. It was proved that the entry of the credits for these allowances on the books, was without his authority, contrary to his purpose, and altogether erroneous. He had evinced the liberality professed in his private letter of February, 1834, by consummating the 50 per cent allowance up to 31st March, 1835, and giving contractors at once a credit of \$62,000 therefor.

(TO BE CONCLUDED IN OUR NEXT.)

A provincial cutter is fitting out at Nova Scotia to seize American fishing vessels that are in the habit, it is said, of violating the provisions of the treaty.